Detailed Action

The Amendments and Remarks filed 8/1/08 in response to the Office Action of

5/1/08 are acknowledged and have been entered.

Claims 11-14 and 60 are pending.

Claims 11, 13, 14, and 60 have been amended by Applicant.

Claims 11-14 and 60 are currently under examination.

The following Office Action contains NEW GROUNDS of rejections.

Rejections Withdrawn

All previous rejections are withdrawn.

New Objections

Claim 12 is objected to because of an inconsistency. Claim 12 capitalizes the

first letter of "Claim" when referencing another claim; however, all other pending claims

which reference another claim do not capitalize the first letter of "claim". Amending

claim 12 in the following manner would obviate this objection: "The vector according to

~~Claim~~ <u>claim</u> 11, wherein said vector is an expression vector". Proper correction is

required.

New Rejections

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this Office

action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-14 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by

Rosen et al (WO 00/55175 A1; 9/21/00).

Claim 60 is drawn to an isolated nucleic acid molecule which encodes a

polypeptide, wherein the amino acid sequence of the polypeptide consists of residues

128-224 of the amino acid sequence presented in SEQ ID NO:8. Claim 11 is drawn to a

vector comprising the nucleic acid molecule according to claim 60. Claim 12 is drawn to

the vector according to claim 11, wherein said vector is an expression vector. Claim 13

is drawn to an isolated cell transformed or transfected with the nucleic acid molecule

according to claim 60. Claim 14 is drawn to a composition comprising the nucleic acid

molecule according to claim 60.

It is noted, an isolated nucleic acid molecule *comprising* a sequence which

encodes residues 128-224 of the amino acid sequence presented in SEQ ID NO:8 also

encodes a polypeptide consisting of residues 128-224 of the amino acid sequence

presented in SEQ ID NO:8, as said nucleic acid molecule comprises a sequence of

nucleotides that consecutively encodes every amino acid of a polypeptide consisting of

residues 128-224 of the amino acid sequence presented in SEQ ID NO:8.

Rosen et al teaches a nucleic acid molecule encoding a polypeptide (SEQ ID NO:36) which is an isolated nucleic acid molecule *comprising* a sequence which encodes residues 128-224 of the amino acid sequence presented in instant SEQ ID NO:8 (see sequence comparison below and pages 2, 4, and 373-374, in particular). Nucleic acid molecules encoding SEQ ID NO:36 taught by Rosen et al encode a polypeptide consisting of residues 128-224 of the amino acid sequence presented in instant SEQ ID NO:8 as said nucleic acid molecules comprise sequences of nucleotides that consecutively encode every amino acid of a polypeptide consisting of residues 128-224 of the amino acid sequence presented in SEQ ID NO:8. Rosen et al further teaches expression vectors comprising said nucleic acid molecule (pages 2 and 129-131, in particular). Rosen et al further teaches a cell transformed or transfected with said nucleic acid molecule (page 131, in particular). Rosen et al further teaches pharmaceutical compositions comprising said nucleic acid molecule (see pages 128-133, in particular).

In the Reply of 2/22/08, it was argued that Rosen et al does not teach a polypeptide *consisting* of residues 128-224 of the amino acid sequence presented in SEQ ID NO:8. It was further argued that Rosen et al does not teach nucleic acid sequence encoding a polypeptide *consisting* of residues 128-224 of the amino acid sequence presented in SEQ ID NO:8.

The arguments found in the Reply of 2/22/08, under further consideration, have been carefully considered but are not deemed persuasive. The Examiner agrees that Rosen et al does not teach a polypeptide *consisting* of residues 128-224 of the amino

acid sequence presented in SEQ ID NO:8; however, the instant claims are drawn to a

nucleic acid molecule and are not drawn to a polypeptide. In regards to the argument

that Rosen et al does not teach nucleic acid sequence encoding a polypeptide

consisting of residues 128-224 of the amino acid sequence presented in SEQ ID NO:8,

Rosen et al teaches a nucleic acid molecule encoding a polypeptide (SEQ ID NO:36)

which is an isolated nucleic acid molecule *comprising* a sequence which encodes

residues 128-224 of the amino acid sequence presented in instant SEQ ID NO:8 (see

sequence comparison below and pages 2, 4, and 373-374, in particular).   Nucleic acid

molecules encoding SEQ ID NO:36 taught by Rosen et al encode a polypeptide

consisting of residues 128-224 of the amino acid sequence presented in instant SEQ ID

NO:8 as said nucleic acid molecules comprise sequences of nucleotides that

consecutively encode every amino acid of a polypeptide consisting of residues 128-224

of the amino acid sequence presented in SEQ ID NO:8.

Comparison of SEQ ID NO:36 and residues 128-224 of the amino acid sequence

presented in instant SEQ ID NO:8:

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Query Match              100.0%;  Score 499;  DB 3;  Length 217;
  Best Local Similarity   100.0%;  Pred. No. 7.9e-52;
  Matches   97; Conservative   0; Mismatches   0; Indels   0; Gaps
0;

Qy        1 MEMRSVLRKAGSPRKARRARLNPLVLLLDAALTGELEVVQQAVKEMNDPSQPNEEGITAL 60
            |||||||||||||||||||||||||||||||||||||||||||||||||||||||||||||
Db        1 MEMRSVLRKAGSPRKARRARLNPLVLLLDAALTGELEVVQQAVKEMNDPSQPNEEGITAL 60

Qy       61 HNAICGANYSIVDFLITAGANVNSPDSHGWTPLHCAA 97
            |||||||||||||||||||||||||||||||||||||
Db       61 HNAICGANYSIVDFLITAGANVNSPDSHGWTPLHCAA 97
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Summary

No claim is allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN E. AEDER whose telephone number is (571)272-8787. The examiner can normally be reached on M-F: 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean E Aeder/
Examiner, Art Unit 1642